HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.8456 of 2002

Dated:18.07.2007

Between:

Sri Vijaya Sai Sago Factory and others.

…Petitioners.

and

The Agricultural Market Committee.

…Respondent.

HON'BLE SRI JUSTICE L.NARASIMHA REDDY

WRIT PETITION No.8456 of 2002

ORDER:

The petitioners are factories, established in the East Godavari District, undertaking the manufacture of 'sago' and allied products. The raw material for this is a plant, by name, 'Cassava'. The Agricultural Market Committee, Peddapuram, the respondent herein, issued notices, dated 02.03.2002, to the petitioners, stating that they are purchasing an agricultural produce, by name, 'Tapioca' (included at serial No.12 of Group III Vegetables in Schedule II) and are processing the same, without obtaining licence under Section 7 of the Andhra Pradesh (Agricultural Produce and Live Stock) Markets Act, 1966 (for short 'the Act'). The petitioners were required to obtain licence, within one week from the date of issue of notice, failing which, penal action was proposed.

Petitioners contend that Tapioca is a product of Cassava and they never purchased Tapioca for manufacture of sago and other products. It is their case that when identical demand was made by the respondent and other Market Committees, the aggrieved parties approached this Court. A Division Bench, through its judgment, in ***Srinivasa Sago Manufacturing Company, Kakinada v. Agricultural***

Market Committee, Kakinada [1]**,** categorically held that a sago factory is not under obligation to obtain licence under Section 7 of the Act, since Cassava is not notified as an agricultural produce, and Tapioca, which is notified, is being used by them. They contend that the impugned notice is not only contrary to the provisions of the Act, but also the judgment of this Court referred to above.

The respondent filed a counter-affidavit. Serious effort is made to state that Tapioca and Cassava are one and the same. Reference is made to literature on the subject. It is also pleaded that the judgment of this Court, referred to above, requires reconsideration. It is ultimately, pleaded that the petitioners are under obligation to obtain licence.

Sri N.Siva Reddy, learned counsel for the petitioners, submits that a Division Bench of this Court had undertaken extensive comparison of 'Cassava' and 'Tapioca', with reference to encyclopaedia, dictionaries etc., and recorded a categorical finding that both are separate and distinct. He further contends that a specific finding was given to the effect that Cassava is not covered by the Act and the sago factories are not under obligation to obtain licence, and though the situation continues to be the same, the respondent has issued the impugned notices, only with a view to harass the petitioners.

Sri Madhava Reddy, learned Standing Counsel for the respondent, on the other hand, submits that from the returns submitted by the petitioners, before the authorities of the Commercial Tax and the orders passed therein, it is evident that the petitioners are dealing in Tapioca and in that view of the matter, they ought to have obtained licence under Section 7 of the Act.

It is the consistent case of the petitioners that they purchase Cassava, as a raw material for their factories. Tapioca is secured after processing Cassava through a different process. Petitioners state that

they do not either purchase, or deal in Tapioca. It is a matter of record that the Tapioca is notified as an agricultural produce, and a licence under Section 7 of the Act is necessary to deal with that product. It is equally clear that Cassava is not included in the schedule, and thereby, it cannot be treated as an agricultural produce in the context of Section 7 of the Act. The respondent did not state either in the impugned notice, or in the counter-affidavit that the manufacturing process undertaken by the petitioners has undergone any change, ever since the judgment of a Division Bench of this Court in ***Srinivasa Sago Manufacturing Company's*** case.

In its judgment, the Division Bench of this Court had undertaken extensive comparison, and ultimately, arrived at the following conclusion:

> *"From a reading of the meaning of these two terms, it is evident that cassava is an agricultural produce, but tapioca is not an agricultural produce but is a product of cassava. Though in the 20th Century Chambers Dictionary, New Edition, "cassava" is used as meaning "tapioca", yet, there can be, no doubt, that cassava and tapioca are two different commodities. Cassava is an agricultural produce, whereas, tapioca is not an agricultural produce but is a product obtained from cassava.*
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> *In the instant case, the notification does not contain the word, "cassava" but contains the word, "tapioca". If any person deals in tapioca, he is bound to obtain licence under Section 7 of the afore-mentioned Act as tapioca is a notified agricultural product. But as the petitioners are dealing not in tapioca but in cassava which is not notified as an agricultural produce, therefore, the petitioners are not bound to obtain licences under Section 7 of the afore-mentioned Act.*
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> *For the above reasons, the writ petition is allowed and the respondents are directed not to take any further action pursuant to their notice, dated 15.12.1994. No costs."*

There could have been justification for the respondent in issuing the impugned notice, if any change has taken place in the manufacturing process after the judgment of this Court, and that the petitioners started purchasing Tapioca, as the raw material. No such factors pleaded, either in the notice or in the counter-affidavit. The

mindset of the respondent is evident from the following sentence in paragraph 6 of the counter-affidavit.

> *"I respectably on advise submit that the finding of the Division Bench reported in 1998 (1) ALD 62 that the Cassava is an agricultural produce but Tapioca is not an agricultural produce but is a product of Cassava and the cassava and tapioca are two different commodities is required to be reconsidered."*

It was in this context that he made extensive efforts to contend that the distinction pointed out by this Court in its judgment is not tenable. The approach and conduct of the deponent of the counter-affidavit is despicable and irresponsible. The counter-affidavit, if at all anything establishes, the lack of regard to the judgment rendered by this Court, in a case to which the respondent herein is a party. Such a course cannot be countenanced. If the respondent felt aggrieved by the judgment of this Court, or had any doubt about its correctness, the only course open to it was to take the matter to the Supreme Court by way of appeal. The view expressed by the deponent in the counter-affidavit, in a way, amounts to contempt of Court and exhibits lack of respect for Rule of law. The respondent cannot be permitted to agitate against the issues, which have assumed finality.

Hence, the Writ Petition is allowed and the impugned notice is set aside, following the judgment of this Court in ***Srinivasa Sago Manufacturing Company's*** *case.* Having regard to the despicable conduct exhibited by the respondent, a sum of Rs.10,000/- (Rupees ten thousand only) is imposed as costs. This amount shall be paid to the petitioners within two months. Default in this regard, would be treated as contempt, by itself.

Dt.18.07.2007 **L.NARASIMHA REDDY, J**

GJ

[1] 1998 (1) ALD 62